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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,127	05/10/2001	Toshiro Suzuki	950-002	5226
7590 12/08/2004				
SOFER & HAROUN L L P 317 MADISON AVENUE SUITE 910 NEW YORK, NY 10017		EXAMINER VINCENT, DAVID ROBERT		
		ART UNIT 2661		PAPER NUMBER

DATE MAILED: 12/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/853,127

**Applicant(s)**

SUZUKI ET AL.

**Examiner**

David R Vincent

**Art Unit**

2661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 8,9,11 and 13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-9,11,13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/9/01</u> . | 6) <input type="checkbox"/> Other: _____  |

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***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 8-9, 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong (6,453,177) in view of Reudink (US 5,757,318) and Walton (US 2003/0123425 A1) .

Wong discloses a cellular system (e.g., col. 1, lines 15-20), base stations with boundaries (perimeter of circle, Figs. 1-2; col. 1; col. 4, lines 55-67), diffusion codes (CDMA codes inherent in CDMA, col. 4, lines 55-67; col. 5, lines 54-67), plurality of slots (frames for different mobiles or subscribers using different CDMA/Walsh codes, col. 4; col. 8, lines 1-21), beam of selected slot being narrower than others (selecting beam width for individual subscribers who have their own CDMA codes based on error rates, e.g., cols. 4, 7-8, especially, col. 8, lines 1-21; Figs. 3-7), as specified in claim 8. Although Wong discloses using CDMA, Wong fails to particularly call for specifically using the diffusion codes (CDMA codes) to

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distinguish the slots (frames for individual subscribers) other than merely disclosing using CDMA is well known; and other details of how a cellular CDMA system operates, such as disclosing cell boundaries, as specified in claim 1; selecting modulation, modulating and encoding, amplifying, and priorities as specified in claim 11; and using QoS, as specified in claim 9.

Reudink teaches using the diffusion codes (CDMA codes) to distinguish the slots (frames for individual subscribers, Fig. 3; col. 2, lines 44-55; col. 3, lines 50-60; col. 6, lines 29-59, especially col. 6, lines 55-56).

Therefore it would have been obvious to one of ordinary skill in the art, having both Wong and Reudink before him/her and with the teachings [a] as shown in Wong, that it is well known to use CDMA diffusion codes and to select a more narrow beam for an individual slot (mobile) and [b] as shown in Reudink, that beams can be selected based on diffusion codes (user assigned ID/CDMA codes), to modify the invention of Wong to specifically use CDMA in his system for selecting narrower beams based on errors simply because Wong already discloses CDMA. By using CDMA a system can better adapt to fading.

Walton teaches using CDMA (sections 10-11 and 17), details of how a cellular CDMA system operates, such as disclosing cell

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boundaries (see e.g., Figs. 5, 8, 13B section 85), as specified in claim 1; selecting modulation (e.g., table 1), modulating, encoding, and amplifying (Figs. 14-15 and respective disclosure, e.g., sections 90-113), priorities (Figs. 10-11; sections 151-171; 232-246, especially 236; table 9), as specified in claim 11; and using QoS (e.g., section 49 or 55), as specified in claim 9.

Therefore it would have been obvious to one of ordinary skill in the art, having both the combination of Wong and Reudink and Walton before him/her and with the teachings [a] as shown in the combination of Wong and Reudink, that it is well known to use CDMA diffusion codes and to select a more narrow beam for an individual slot (mobile) and that beams can be selected based on diffusion codes and [b] as shown in Walton, that a cellular CDMA system can use cell boundaries, select modulations (e.g., table 1), encode and amplify (Fig. 15) slot data, use or determine various priorities (Figs. 10-11; section 236; table 9), and use QoS (e.g., section 49 or 55), to modify the combination of Wong and Reudink to specifically use CDMA in the system for selecting narrower beams based on errors, priorities or QoS because Walton discloses using various power levels for various priorities and QoS which related to individual slots (CDMA frames or subscribers). By using CDMA a

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system can better adapt to fading, and by including priorities and/or QoS parameters, the system could charge more for allowing higher rates of data to pass or could give more important mobiles, such as military personnel, higher priorities, higher power levels and more narrow beam widths. The more narrow beams could add to the security or allow for higher power levels to be more focused.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David R Vincent whose telephone number is 571 272 3080. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Vanderpuye can be reached on 571 272 3078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
David R Vincent  
Primary Examiner  
Art Unit 2661

December 4, 2004